

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

VINCENT VILLANO,

Plaintiff,

v.

STATE COLLECTION SERVICE INC.,

Defendant.

CASE NO. 3:22-cv-05998-DGE

ORDER DENYING MOTION TO
REMAND (DKT. NO. 2)

I INTRODUCTION

This matter comes before the Court on Plaintiff's Motion to Remand. (Dkt. No. 2.)

Having reviewed the record and the parties' briefing, the Court DENIES the Motion.¹

II PROCEDURAL POSTURE

Plaintiff served Defendant with an unfiled summons and complaint via counsel on June 16, 2022. (Dkt. Nos. 2-2 at 1; 2 at 2.) He later filed that complaint in Spokane County Superior

¹ Plaintiff's Motion to Re-Note the Motion to Remand (Dkt. No. 6), although now technically moot, is GRANTED, and the Court considered all relevant briefings as timely in the instant Motion.

1 Court. (Dkt. No. 2 at 2.) On December 8, 2022, Plaintiff voluntarily dismissed that action
 2 without prejudice and sent notice of the dismissal to Defendant. (Dkt. Nos. 2-4; 2 at 2.) Plaintiff
 3 then refiled an identical action in Pierce County Superior Court (“Pierce County Action”) on
 4 December 14, 2022. (Dkt. No. 11-2.) He served Defendant via counsel that same day. (*Id.*)

5 Defendant removed the Pierce County Action to this Court on December 22, 2022—eight
 6 days after Plaintiff served him. (Dkt. No. 1.) Excepting formatting changes, the Spokane
 7 County complaint and the Pierce County complaint appear identical. (*Compare* Dkt. Nos. 2-1 at
 8 4–23 *with* 6 at 6–25.) Plaintiff now moves to remand the action to Pierce County, alleging
 9 Defendant’s removal was untimely because it had notice of the claims since June 2022.

10 III DISCUSSION

11 28 U.S.C. § 1446(b) governs the filing of a notice of removal of a state court action. It
 12 states:

13 The notice of removal of a civil action or proceeding shall be filed within 30 days
 14 after the receipt by the defendant, through service or otherwise, of a copy of the
 15 initial pleading setting forth the claim for relief upon which such action or
 16 proceeding is based, or within 30 days after the service of summons upon the
 17 defendant if such initial pleading has then been filed in court and is not required to
 18 be served on the defendant, whichever period is shorter.


19 28 U.S.C. § 1446(b).

20 At issue is when does the removal period begin to run under 28 U.S.C. § 1446(b) when:
 21 (1) a complaint is served on a defendant, (2) then filed in state court in one county, (3) then
 22 voluntarily dismissed, and (4) then refiled in state court in a different county and served again on
 23 a defendant along with a new summons. Plaintiff claims that because the Ninth Circuit has not
 24 ruled on this exact issue, the timeliness of Defendant’s removal “creates doubt” and must be
 remanded. (Dkt. No. 12 at 3.)

1 However, a voluntary dismissal without prejudice Federal Rule of Civil Procedure 41(a)
 2 “leaves the situation as if the action never had been filed.” *City of South Pasadena v. Mineta*,
 3 284 F.3d 1154, 1157 (9th Cir. 2002) (quoting 9 C. Wright & A. Miller, Federal Practice and
 4 Procedure § 2367, at 321 (2d ed. 1995)). In *Cadkin v. Loose*, plaintiffs waived a copyright claim
 5 and then voluntarily dismissed suit. 569 F.3d 1142, 1149 (9th Cir. 2009). After plaintiffs refiled
 6 and asserted the previously waived claim, the Ninth Circuit allowed it, noting that “waiver in one
 7 lawsuit does not carry over to a subsequent lawsuit following a voluntary dismissal without
 8 prejudice under Rule 41(a).” *Id.*; see also *Humphreys v. United States*, 272 F.2d 411, 412 (9th
 9 Cir. 1959) (“[A] suit dismissed without prejudice pursuant to Rule 41(a)(2) leaves the situation
 10 the same as if the suit had never been brought in the first place.”).²

11 Here, although Defendant waived removal in the first action, because Plaintiff voluntarily
 12 dismissed that action and then refiled in Pierce County, he created an entirely new lawsuit,
 13 subject to Defendant’s fresh assertion of previously waived rights, including removal. Upon
 14 filing and serving a new summons and complaint, the clock for removal reset under 28 U.S.C. §
 15 1446(b). A new action was filed on December 8, 2022 and within 30 days, Defendant exercised
 16 its right to removal. Thus, removal was proper and Plaintiff’s motion to remand is DENIED.

17
 18 Dated this 20th day of March, 2023.

19
 20
 21 
 David G. Estudillo
 United States District Judge

22 ² Dismissals under Rule 41(a)(1) and Rule 41(a)(2) have the same effect. See *Concha v. London*,
 23 62 F.3d 1493, 1506-1507 (9th Cir. 1995). The Court is unaware of any reason why a voluntary
 24 dismissal without prejudice in a state court action should be treated differently than a voluntary
 dismissal without prejudice under the Federal Rules of Civil Procedure.